

# Chapter 8: MEPA Timeliness and Efficiency

## CHAPTER SUMMARY

- < The EQC MEPA Subcommittee chose to analyze the issue of when and where agencies are having difficulty meeting timeframes.
- < The Montana Environmental Policy Act does not have any statutory timeframes for preparing MEPA documents or conducting an environmental review process.
- < The only reference to time in MEPA is that an agency must determine, within 30 days of receiving a completed application for a project that triggers MEPA, whether or not an EIS will be required and, if so, whether or not fees will be assessed to the applicant. This can be problematic.
- < There are timeframe references found in the MEPA Model Rules that relate to the public participation process, emergency actions, final decisions, and EIS fees.
- < Timeframes that agencies may have difficulty meeting are those that are legislatively established in various permitting statutes and in agency regulations and agency policies.
- < Not all permitting statutes have time limits.
- < Some permitting statutes have extension provisions to allow for additional time, some do not.
- < Most permitting statutes do not have "penalties" for missing deadlines, others require a permit to be issued if a deadline is missed.
- < For the majority of projects subject to MEPA review, state agencies report that they "sometimes" have difficulty meeting statutory deadlines.
- < For a few activities, such as air quality permits, game farm (now alternative livestock ranch) permits, oil and gas leases, and the Major Facility Siting Act, agencies report that they "often" or "always" have difficulty meeting timeframe deadlines.
- < Significant reasons for review delays are related to the size and complexity of the project and the degree of public interest and involvement. "Complex things aren't simple."

- < Agency resources are a factor in the time it takes to comply with MEPA, but this was not identified as the most significant factor.
- < For mines that received permits over the past 10 years, the average time for processing a complete metal mine operating permit application through the MEPA process was 15 months. For all metal mine operating permit applications over the last 10 years, the MEPA review time ranges from 1 month to infinity, depending on the applicant.
- < Some EISs take less time than some EAs.
- < For the 23 state land timber sales that were subject to an EA process and that were sold in fiscal year 1999, the average project and MEPA review time was 13 months. For the two timber sale projects that were subject to an EIS process, the average project and MEPA review time was 21 months.
- < All game farm (now alternative livestock ranch) permit applications reviewed by the state in the past 30 months were the subject of an EA under MEPA, and all were completed very nearly within the 120-day statutory timeframe for EAs.

# Chapter 8: MEPA Timeliness and Efficiency

## Introduction

One study goal of SJR 18 is to evaluate the MEPA process to ensure that it results in state agencies making timely and efficient decisions on projects that are subject to environmental review under the Montana Environmental Policy Act. A criticism of the MEPA process is that it can result in project or permitting delays. Any legislative policy that requires a public review, however detailed, of potential environmental impacts that could result from state government decisions will necessarily take some additional time over a policy that does not require such an analysis. The issue is whether or not that additional time or delay is unreasonable and whether or not state agencies are able to make decisions in a timely and efficient manner.

The EQC's initial 1999 solicitation of comments on MEPA issues resulted in 14 comments that relate directly to the topic of MEPA timeliness and efficiency. Additional concerns and comments regarding MEPA timeliness were directed at the issue of public participation, which is discussed in more detail in **Chapter 9**. Of the 14 specific comments regarding the efficiency and timeliness of agencies' environmental review process, document preparation, and decisionmaking, 4 came from agencies and 5 each came from permit or project interests and from citizen groups.

Most of the 14 comments referred to the existing specific decisionmaking timeframes within permitting statutes or rules or the lack thereof. Organizations representing permit applicants generally suggested that specific statutory time limits should be imposed for permit review, environmental review, and judicial review with clear standards established describing when those limits may be exceeded. Citizen groups suggested that some existing time limits should be repealed, that some timeliness problems may occur from the insufficiency of initial project applications, and that projects that are also subject to federal NEPA review have no deadlines, which may result in delays attributed to MEPA. State agencies expressed concerns about conducting environmental reviews within specific timeframes and about conducting environmental reviews in a changing environment that would then require supplementing the environmental review.

The EQC prioritized these issues and selected one to review in depth: "categorize when and where agencies are having a problem meeting timeframes". This issue presumes that agencies have statutory or regulatory timeframes in their decisionmaking processes, which is not always the case, and it assumes that agencies have problems meeting these timeframes. It also includes elements of several of the other comments made on this topic by agencies, project proponents, and citizen groups. The issue asks for a categorization of "when and where" agencies have difficulties, but not necessarily "why". However, the EQC review did touch on this question as well.

# Categories of Projects and Timeliness

MEPA itself does not include any reference to timeframes for conducting an environmental review of a proposed action, except that an agency must determine within 30 days of receipt of a completed application whether or not an EIS will be necessary and, if so, whether fees will be assessed to the applicant. The Department of Fish, Wildlife, and Parks has commented that this statutory requirement can be problematic to an agency in those instances when an EA is prepared that later concludes that an EIS is necessary or when a court ultimately rules that an EIS was necessary and more than the 30 days have transpired.

The MEPA Model Rules specifically mention timeliness in the following situations:

- X      how much time is to be allowed for public comment on the draft and final EIS (30 or 60 days);
- X      how long an agency must wait after an EIS is completed before it makes its final decision (15 days);
- X      when an agency must notify the Governor and the EQC of conflicts between MEPA and other statutes and after taking emergency action without complying with MEPA (30 days);
- X      when a public hearing on a draft EIS is required (20 days after a qualified request); and
- X      when an agency determines that an EIS is required and fees will be assessed against the project proponent (30 days after application is complete).

There are additional time deadlines in the rules for reviewing EIS cost estimates and for refunding EIS fee overpayments to the applicant.

Otherwise, the "MEPA" timeframes that restrict agencies are actually found in some, but not all, of the activity-specific statutes. Most involve the issuance of a permit. The following is a list or description of those statutes as provided by the agencies in response to an EQC survey question - "Please identify the statutes that make it difficult to conduct a MEPA analysis or an adequate MEPA analysis because of timeframe restrictions."

## ***Department of Fish, Wildlife, and Parks***

The agency administers several permitting statutes that include statutory deadlines for permitting actions. For example, the department has 30 days from the receipt of an application for a game bird farm license or a fur farm license to notify the applicant of its decision to approve or deny the application. However, only the game farm (alternative

livestock ranch) statute (section 87-4-409(4), MCA) was specifically identified as causing the agency occasional difficulty in meeting statutory deadlines due to MEPA compliance issues.

(4) Within 120 days of the acceptance of a complete application, the department shall notify the applicant of its proposed decision to approve, approve with stipulations, or deny the application. If the department determines that the preparation of an environmental impact statement is required by Title 75, chapter 1, and by department rules adopted pursuant to the Montana Environmental Policy Act, then the department has an additional 180 days to act on the completed application.

Additionally, the agency described the general situation in which heightened public controversy or the complexity or difficult impact analyses of a particular permit or project may cause occasional delays in reviewing projects. Delays are related more to the individual circumstances surrounding the particular project rather than attributable to a general class of projects or a particular statute.

The agency identified one area in which the MEPA process consistently causes delays in project reviews. The agency often seeks information from other agencies, and other agencies seek information from FWP regarding potential impacts on resources within the management role and mission of the agency (fish, wildlife, endangered species, etc.). Often the short internal or statutory timeframes for response are insufficient to either provide or obtain the requested information or analysis. This is a problem that relates to the availability of agency resources and baseline information.

### ***Department of Environmental Quality***

The agency identified the following permitting statutes as those that have time limits for conducting a permit review, which may make it difficult to conduct an adequate MEPA analysis within the same time limits.

**Clean Air** (Section 75-2-211(9), MCA) 75 days from receipt of an application to decision with mutually agreeable 30-day extensions; 180 days if an EIS is required

**Water Quality** (Section 75-5-403, MCA)

MPDES Permits 60 days for the initial review, 30-day cycles thereafter, with no maximum

MGWPCS Permits 30-day review cycles, no maximum

Storm Water Plan Approvals 60 days for the initial review, 30-day cycles thereafter, no maximum

Authorizations to Degrade preliminary decision must be issued within 180 days, unless an EIS is prepared, in which case there is no time limit

**Public Water Supply** (Section 75-6-101, et seq., MCA) 60-day response time for each plan submitted for review

**Motor Vehicle Recycling and Disposal** (Section 75-10-516, MCA) two 30-day county commissioner reviews; MEPA review does not have a time limit

**Underground Storage Tank** (Section 75-11-501, et seq., MCA) 30 days, by administrative rule, from the receipt of a completed application to the decision

**Major Facility Siting** (Sections 75-20-216 and 75-20-232, MCA) 60 days for the initial review; 30 days for subsequent review; EIS review in 365 days; and EA review in 180 days

**Sanitation in Subdivisions** (Section 76-4-125, MCA) 60 days for the initial review, 60 days for each subsequent review, plus a comment period under nondegradation for all subdivisions that do not hook up to public sewer system; 120 days from complete application to EIS

**Strip and Underground Mine Reclamation** (Section 82-4-231, MCA)

New Permits completeness review in 90 days, adequacy review in 120 days, then 45 days for findings and a notice of decision; 365 days if an EIS is required

Operating Permit Modifications see "New Permits"

**Metal Mine Reclamation** (Section 82-4-337, MCA)

New Permits 60 days for the initial review, 30 days for each subsequent review; concurrent review for data needs to resolve MEPA issues; 365 days or negotiated extension for an EIS; and EA prepared in 30 days or negotiated extension, not to exceed 75 days

Operating Permit Modifications significant impacts reviewed per new permit procedure; nonsignificant procedures reviewed in 30 days

Exploration License no explicit time limit for significant impacts; 30-day review policy to approve or deny nonsignificant impacts

Exploration Project Approvals no explicit time limit for significant impacts; 30-day review policy to approve or deny nonsignificant impacts

New Small Miner Cyanide Operating Permits see "New Permits" for significant impacts; 30-day review policy to approve or deny nonsignificant impacts

**Opencut Mine Reclamation** (Section 82-4-432(4), MCA) new contracts and modifications, 30 days to review, with a 30-day extension

### ***Department of Natural Resources and Conservation***

The agency submitted four responses to the timeframe issue survey, one from each of the Trust Land Management Division programs. The agency generally does not have statutory deadlines within which it must act that restrict its ability to manage and lease state trust lands. In conducting reviews of permit applications or in reviewing proposals for various land management uses, the MEPA process can cause delays in cases when controversies arise about the impacts of the specific proposal. Generally, these delays impact the applicant or the proponent of the action and can occasionally result in problems identified by the agency, such as additional trespass upon state lands, projects being

dropped, decreased revenue to the trust land beneficiaries, and secondary impacts to the proponents, including missed deadlines for enrolling in federal farm subsidy programs.

The agency identified two specific state requirements that can make compliance with MEPA problematic. The agency interprets section 77-5-223, MCA, as requiring the department to prepare for sale from state forest lands the annual sustainable yield, currently calculated as 42.2 million board feet of timber. Efforts to comply with this statute can be complicated by MEPA process delays and occasional litigation over particular timber sale proposals. Also, the department conducts quarterly sales of oil and gas leases by agency rule, (ARM 36.25.205). The processing of oil and gas lease applications, including the MEPA analysis process, to meet these internal agency timeframes often results in overtime efforts on behalf of the MEPA document authors and responders.

### ***Department of Transportation***

No state or federal statutory time restrictions or limitations were identified by the agency. Most projects are federally funded and are subject to federal NEPA analysis. For those that are subject to state MEPA review, no statutory limitations were found. Large complex multimillion-dollar construction projects typically take longer than relatively simple construction, reconstruction, or maintenance projects. For a variety of reasons, MDT generally finds it necessary to address more MEPA-related issues, concerns, and opportunities for projects undertaken in western Montana than elsewhere.

### ***Department of Commerce***

The Department did not believe that it was having any difficulty meeting timeframes due to MEPA or NEPA compliance requirements. Programs subject to MEPA analyses include the federally funded community development block grant (CDBG) program and the state-funded treasure state endowment program (TSEP).

Before federal CDBG funds are released for proposed housing or public facility projects, federal rules require NEPA compliance by the grant recipients. Before DOC releases CDBG funds, it makes a formal determination regarding the potential environmental impacts of the proposed project in accordance with MEPA using the NEPA environmental assessment produced by the grant recipient and a consolidated NEPA-MEPA format that is said to address both laws.

Under the state-funded TSEP program, DOC ranks proposals under a competitive scoring system. The Legislature selects and approves all TSEP projects for funding. Since section 75-1-201, MCA, exempts legislative actions from MEPA, DOC maintains that an environmental analysis of impacts from TSEP proposals is not required because technically, the decision to approve and fund the project is legislative. Nevertheless, in keeping with the intent of MEPA, DOC requires all TSEP applicants to complete an environmental checklist for their project as part of the application. DOC can utilize the information generated to affect the project scoring and to advise legislators regarding potential environmental impacts of proposals prior to legislative approval.

### ***Department of Livestock***

No response. No known statutory limitations.

### ***Department of Agriculture***

No statutory limitations or restrictions were identified by the agency. No permitting functions were identified. The agency responded that before a contract or grant is awarded under the noxious weed trust fund program, internal procedures require the grant applicant to submit project information necessary for the agency to complete an environmental assessment for the project. Any delays in awarding grants are the result of incomplete information from the grant applicant.

### ***Summary***

In reviewing state agencies' current implementation of MEPA, the question of where agencies are having difficulties or could have difficulties in meeting timeframes is answered specifically by the Department of Environmental Quality and the Department of Fish, Wildlife, and Parks. Statutory or regulatory deadlines in the permitting programs of these agencies are where most problems could occur in the event of a lengthy or controversial MEPA process. When agency-imposed rules or policy deadlines are contributing to the agencies' ability to comply with MEPA, agencies can make the appropriate adjustments unilaterally.

The statutory deadlines established for the issuance of a permit or the taking of a state action can be inflexible, as in the case of the maximum 60 day review for a gravel pit permit application, or negotiable, as in the permitting statutes for metal mine permits and water quality permits. In situations in which the statutory deadlines include a nonnegotiable maximum deadline for permit review, rulings by the Supreme Court in *Kadillac v. The Anaconda Company* (1979) for metal mines and by the Fourth Judicial District in *Westview People's Action Association v. Dept. of State Lands* (1990) for gravel pits state that the specific statute takes precedence and that the MEPA review must be conducted within the statutory timeframes. *Kadillac* resulted in the Legislature extending the previous 60 day time limit for reviewing metal mine permits and major permit modifications to 365 days with an ability to negotiate with the applicant for further extensions. The open-cut (gravel pit) permit time limit remains fixed at 60 days.

## **Frequency of Delay Due to MEPA**

How many problems are the agencies having in meeting timeframes because of MEPA compliance? In response to this question, the agencies provided the information shown in **Table 8-1**. The agencies were asked to describe projects that were subject to MEPA and whether it was rarely, sometimes, often, or always difficult to meet project timeframes due to MEPA compliance. The agencies were asked to differentiate between agency-initiated projects, such as highway construction, land leases, timber sales, and state facility



construction projects, and agency permitting actions. For the vast majority of the projects, agencies reported that they "sometimes" had difficulty meeting timeframes. The definition of "sometimes" is subjective, and there was no effort made by the agencies or the EQC to numerically quantify how often "sometimes" occurred.

There was no notable difference regardless of whether a project was initiated by an agency or was the result of an agency permitting action. Generally speaking, the DEQ permitting programs are working within statutory timeframes and the DNRC programs are responding to needs of the permit applicant or to internal agency policies.

Agencies noted that they "often" had difficulty meeting timeframes in the implementation of the Major Facility Siting Act (DEQ), the game farm (alternative livestock ranch) permitting laws (FWP), and the state timber sale and oil and gas leasing program (DNRC). The comments regarding the Major Facility Siting Act are speculative as there has not been much recent activity. However, 1999 legislative changes have reduced the time for conducting a permit review from 22 months to 12 months, and the agency is presuming future difficulties based on past experience.

The only situations in which an agency identified that it "always" had difficulty meeting timeframes due to compliance with MEPA are in the DEQ air quality permit program and in comments from FWP in terms of its ability to provide and obtain professional and technical advice on MEPA projects in a timely manner. The DEQ air quality permit program advised that it has not missed any statutory deadlines for issuing permits, but that it is very often or always difficult and that the quality or thoroughness of the permit review may suffer due to time constraints. This may be related to the complexity of the project, the controversy surrounding a project, the availability of information, staffing resources, or a combination of all the above.

**Table 8-1. Frequency of Delay - MEPA**

Please categorize the type of projects for which it is "Rarely, Sometimes, Often, or Always" difficult to meet timeframes because of MEPA (please separate agency projects from permitting actions).

	<u>Agency Projects</u>	<u>R</u>	<u>S</u>	<u>O</u>	<u>A</u>	<u>Statute/Requirement</u>
	sewers - infrastructure funding	X				
	<u>Agency Permitted Projects</u>					
	coal mining permits		X			<b>82-4-101</b> Strip and Underground Mine
DEQ	air quality permits				X	<b>75-2-101</b> Clean Air
	water quality permits		X			<b>75-5-101</b> Water Quality
	sanitation in subdivisions		X			<b>76-4-101</b> Sanitation in
	Subdivisions					
	hard-rock permits					
	major new permits		X			<b>82-4-301</b> Metal Mine Reclamation
	amendments		X			
	major facility siting			X		<b>75-20-101</b> Maj Fac Siting Act
	opencut mine reclamation	X				<b>82-4-401</b> Opencut Reclamation
	underground storage tanks	X				<b>75-11-501</b> Underground Storage Tank
	motor vehicle disposal	X				<b>75-10-501</b> Motor Vehicle Recycling and
	Disposal					
MDT	highway construction	X				
FWP	game farm permits			X		<b>87-4-409(4)</b> Game farms (Alternative Livestock Ranches)
	responding to other agencies				X	
	<u>Agency Projects</u>					
	commercial development		X			none - prog. policy, applic. needs
	land sales		X			none " "
	timber sales			X		<b>77-5-223</b> & HB 2 p. C-10, line 24
	oil/gas leasing			X		agency rule - ARM 36.25.205
	other mineral leasing		X			none - lessee expectations
	existing min. lease reviews			X		none - lessee expectations
DNRC	<u>Agency Permitted Projects</u>					
	improvement authorizations		X			none - applic. needs
	land breaking requests		X			none " "
	range renovations		X			none " "
	livestock class changes		X			none " "
	land leases					
	cabin sites		X			none - prog. policy, applic. needs
	commercial		X			none - " " "
	right-of-way deeds		X			none - " " "
	improvement authorizations		X			none - " " "
AGRI	noxious weed grants	X				none

COMMERCE - not applicable - NEPA compliance for CDBG grants, legislative exemption for TSEP

## Permit Turnaround Estimates

As another indication of how MEPA relates to the permit timeframe issue, DNRC, FWP, and DEQ were asked to provide examples of their permit applications for review. Section 2-15-115, MCA, which became effective October 1, 1999, requires agencies to provide a notice to the applicant of its estimated turnaround time for acting on completed permit applications. FWP responded that its applications state the time set forth in the permitting statute and provided no examples. **Table 8-2** includes a partial listing of permits issued by DEQ and DNRC and the estimated turnaround time for issuance of the permit.

Several permit applications include disclaimers to the estimated turnaround times, stressing that the timeframes assume the receipt of a complete application and allowing for a range of time depending on the environmental review required.

**Table 8-2. Permit Turnaround Estimates**

<b>DNRC Permits (a selection)</b>	
<u>Permit or Lease</u>	<u>Estimated Turnaround Time</u> (if application is complete)
State Land Use License Application . . . . .	60-90 days
Easement Across State Lands . . . . .	90-120 days
with EA Checklist . . . . .	60-90 days
with EA . . . . .	60-180 days
with EIS . . . . .	indeterminate
Grazing or Crop Lease Assignments . . . . .	30 days
Oil and Gas Lease Application . . . . .	N/A but in time for quarterly lease sales if possible
Mineral Lease of State Lands . . . . .	30-60 days
Nonmechanized Mineral Prospecting . . . . .	30-60 days
Assignment of Oil and Gas Lease . . . . .	14 days
Oil and Gas Exploration Permit . . . . .	60 days
<b>DEQ Permits (a selection)</b>	
<u>Permit</u>	<u>Estimated Turnaround Time</u> (if application is complete)
<b>WATER PROTECTION BUREAU</b>	
Ground water Pollution Control Permit . . . . .	180 days (30 days for general permit)
<b>MT Pollutant Discharge Elimination System - Discharge Permit</b>	
Short Form 2-A; nonindustrial discharges . . .	180 days (30 days for general permit)
Short Form C; ground water discharge to surface water . . . . .	30 days
Short Form S; portable suction dredge discharges . . . . .	30 days
Consolidated NPDES permits . . . . .	180 days or more if complex
Short-term exemption - emergency remediation/pesticides . . . . .	30-60 days
Short-term narrative standard for turbidity from construction (318/3A) . . . . .	30-60 days

## AIR AND WASTE MANAGEMENT BUREAU

### Asbestos

project abatement and removal .....	7-10 working days (by rule)
training course approval .....	45 working days
annual abatement permit .....	45 working days

### Air Quality Permit

stationary sources .....	60 days or up to 180 days for EIS (by law)
portable sources .....	60 days or up to 180 days for EIS (by law)

## ENVIRONMENTAL MANAGEMENT BUREAU (Metal Mines)

Exploration License .....	30 days
Operating Permit .....	60 days completeness review, 30 days deficiency reviews, 30 days for an EA, and 365 days for an EIS. Extensions possible (by law).

## INDUSTRIAL AND ENERGY MINERALS BUREAU (Gravel and Coal)

Opencut Reclamation Permit .....	30 days plus 30 day extension (by law)
Strip or Underground Mining	
5-year permit renewal .....	240-300 days (by law)
Initial permit .....	averages 4 years or more
Assignment of existing permit .....	75 days
Prospecting permit .....	60 days
Prospecting permit renewal .....	120-150 days
Prospecting permit assignment .....	60 days

## COMMUNITY SERVICES BUREAU (Drinking Water, Wastewater, and Solid Waste)

Water/Wastewater Operator Permit Application .....	14 to 21 days
Solid Waste License	
Class II Transfer station (household waste) .....	365 days
Class III landfill (inert, wood, tires) .....	365 days
Class IV landfill (construction debris plus group III) .....	365 days
Septic Tank Cleaner License .....	0 days
Wrecking Yard License .....	90-120 days

## Timeliness Issues - Causes

In addition to asking when and where agencies may be having difficulties meeting timeframes, the EQC asked agencies to categorize the reasons why MEPA review may take longer than anticipated in certain instances. The Department of Commerce and the Department of Fish, Wildlife, and Parks provided narrative responses that are discussed previously in this chapter. Other agency responses to criteria that were provided by the EQC are shown in **Table 8-3**. The agencies were asked to rank the criteria in terms of how each criteria related to the time it takes to comply with MEPA, from no or low impact (1) to significant or high impact (10). Some of the criteria were not relevant, and others were significant for nearly every agency.

**Table 8-3. MEPA Timeliness - Reasons for Delay**

	DEQ	Dept of Agriculture	Department of Natural Resources				MDT	FWP	Commerce
			Agric and Grazing Mgmt	Special Use Mgmt	Forest Mgmt	Minerals Mgmt			
Project size/complexity	10	5	10	10	8	10	10	(narrative response)	(narrative response)
Project impacts-number/significance	10	na	10	10	6	5	10		
Degree of public interest	8	na	7	10	5	10	10		
Organized/funded project opposition present	9	na	10	10	10	5	10		
Extent of public notification efforts	5	na	5	10	5	5	5		
Availability of reliable baseline data	10	5	5	5	5	5	5		
Project application completeness	6	5	7	10	na	1	-		
Who is proposing the action; project viability	1	na	5	5	1	1	5		
Available agency resources for MEPA review	7	5 - employee turnover can be a problem	7	5	8	10	5		
MEPA document type required for project	5	na	8	5	5	10	5		
Agency is the project proponent	n/a	na	5	1	1	5	5		
Project is subject to an agency permitting action	8	na	-	1	10 USFS, USFWS, rights-of-way	1	-		

	DEQ	Dept of Agriculture	Department of Natural Resources				MDT	FWP	Commerce
			Agric and Grazing Mgmt	Special Use Mgmt	Forest Mgmt	Minerals Mgmt			
If the agency has any discretion in approving or denying the project	1	na	-	1	na	-	1		
Geographic considerations; project location	7	na	1	5	9	1	7		
Planning considerations; presence or absence of land use planning	4	na	2	1	2	na	5		
Potential for litigation over the final decision	1	na	10	10	10	5	5		
BELOW : ADDITIONAL SITUATIONS THAT DETERMINE LENGTH OF TIME TO CONDUCT THE MEPA PROCESS AS PROVIDED BY THE AGENCIES									
Delays due to federal agency workloads, actions, decisions, and permits	9				X see above-permitting				
Complex issues	10								
Sensitive and complex project locations	10								
Complex alternatives	10								
Complex interagency relationships	10								
Response time of the project applicant	5								
Political sensitivities and considerations					10				

Most agencies and programs identified the following situations as significant contributors to the length of time required for complying with MEPA: project size and complexity, project impacts and their significance, degree of public interest in the project, and the presence of an organized project opposition. Depending on the agency, other significant time-factor criteria included how extensive the public notification efforts were for a project, the availability of reliable baseline information, the completeness of the project application, the availability of agency resources to process projects, the type of MEPA evaluation that is required for a project, whether or not the project is subject to a permitting action by a federal agency, the project location, the potential for litigation over the agency's final decision, the complexity of project issues, alternatives, and interagency relationships, the sensitivity of project locations, and other political sensitivities and considerations. One agency responder succinctly described the relationship between a project and the time it takes to conduct an agency MEPA review as "complex things aren't simple".

There are differences in agency missions and objectives that are reflected in the responses to this question. For example, DEQ, with its permitting responsibilities, identified the project complexity and size, the number and significance of project impacts, the degree of public interest, the presence of an organized project opposition, the availability of reliable baseline information, federal permitting requirements, the overall complexity of the project, complex alternatives, interagency relationships, and the sensitivity of the project's location as key criteria that influence the timely processing of permits.

The DNRC forest management program, with its timber management objectives, identified project size and complexity, the presence of an organized project opposition, federal permitting requirements, project location, potential for litigation, and political sensitivities and considerations as the most significant criteria affecting project timeliness. It may be illustrative to note that 3 of the 4 responding DNRC programs identified the potential for litigation over the final agency decision to be a significant factor in the time it takes to comply with MEPA, whereas the DEQ permitting agency discounted this criteria as not significant. Also, most agencies (with the exception of the DNRC minerals management program) ranked the resources available to the agencies to conduct MEPA reviews to be a significant factor but not the most significant factor in determining the amount of time it takes to comply with MEPA.

## **A Closer Look - Metal Mine Permitting, State Land Timber Sales, and Game Farm (Alternative Livestock Ranch) Permitting**

Prior to and during the course of the MEPA study, the EQC was made aware that MEPA issues involving metal mine permitting, timber sales on state lands, and game farm (alternative livestock ranch) permitting were of particular concern to the public, agencies, and permit or project proponents. These three activities are the responsibility of three different state agencies. **Chapter 3** shows that these activities have been the subject of considerable MEPA effort, and **Chapter 4** indicates that they have also been the subject

of substantial MEPA litigation. The EQC decided to review the MEPA compliance process for these three activities in more detail in order to gather more information on the timeliness issue--does the MEPA process result in timely and efficient decisionmaking?

### ***Metal Mine Permits***

The EQC requested and received information from DEQ that listed the metal mine operating permit applications that were processed by the agency (or by the Department of State Lands prior to agency reorganization in 1995) between January 1990 and December 1999 (**Table 8-4**). The table lists 22 metal mine permit projects by name and describes what the particular application was for, when the application was received, and when the application was deemed complete in accordance with state law and rule, lists what type of environmental review/MEPA document type was prepared, lists when the record of decision was made by the agency, when the permit was issued, and what the elapsed time for conducting the MEPA review was, and notes any explanatory comments particular to the project. The elapsed time for MEPA review is defined in the table as that time from when the agency deemed the application complete to when it made a final decision on the permit.

The timelines for MEPA review range from 1 month to an indefinite time in the case of the McDonald Seven-Up Pete application, which was halted when the applicant failed to pay the agency costs of EIS preparation, in the case of the New World mining project near Cooke City, which was purchased by the federal government, and in the cases of the Rock Creek-ASARCO mine and General Quarry programmatic environmental reviews, which are still pending. For the remaining 18 projects, the average elapsed time for MEPA review is 15 months, and the mean for these projects is 11 months. Delays between the final agency decision and the issuance of a permit are usually the result of the applicant not providing the required bonding.

The time between the filing of an initial application and the agency's determination that an application is complete may be from 3 months to several years as shown in columns 3 and 4 of **Table 8-4**. The EQC reviewed detailed information on the process for determining application completeness in the case of four permits; two from large mine projects and two from smaller operations. This information is shown in **Table 8-5**.

An application for a metal mine operating permit or for major amendments to an existing operating permit must be reviewed for completeness within 60 days of receipt by the agency. Incomplete applications are returned to the applicant with deficiencies listed (deficiency letter). The applicant has no deadline by which to respond. Once the applicant responds to the deficiency letter, the agency has 30 days to respond to the applicant's response and so on until a complete operating permit application is provided (sections 82-4-337 and 82-4-342, MCA). The operating permit application must include those items specified in section 82-4-335, MCA, which include the proposed reclamation plan.



**TABLE 8-4. Status of MEPA Review for Metal Mine Permit Applications Received  
January 1990 Through December 1999 - DEQ**

Project	Description	Initial Application	Applica- tion Complete	MEPA Document – type/date completed	Record of Decision	Date Permit Issued	Time for MEPA Review*	Comments
Majesty	Open pit gold	2-97	9-98	EA / 10-98	10-98	10-98	1 month	Converted from existing small miner
Sweetwater Garnet	Garnet, gold, silver	1-95	8-95	EA / 9-95	11-95	11-95	3 months	
South Beal	Open pit gold & silver	1-92	3-93	EIS / 6-93	7-93	7-93	4 months	
Diamond Hill	Underground gold & silver	1-95	1-96	EIS / 3-96	5-96	5-96	4 months	
Conda	Rock quarry	4-96	8-96	EA / 9-96	1-97	1-97	5 months	Expand fine material storage area
East Boulder	Underground platinum & palladium	6-98	11-98	EA / 3-99	5-99	5-99	6 months	Expand permit area to construct & operate water treatment facilities
Stillwater Under the River Crossing	Underground platinum & palladium	4-95	7-95	EIS / 2-96	2-96	2-96	7 months	Tunnel under the Stillwater River to connect parts of existing mine
Dillon Vermiculite	Vermiculite	10-96	8-98	EA / 4-99	4-99		8 months	Permit issuance pending receipt of bond
Stillwater Expansion (SMC2000)	Underground platinum & palladium	12-90	10-91	EIS / 9-92	9-92	9-92	11 months	Expansion of existing mine
Gem River	Placer sapphire & gold	4-96	4-98	EA / 5-98	2-99		10 months	Permit issuance pending receipt of bond
Barretts Regal Mine	Open pit talc	9-96	5-97	EA / 6-98	8-98	8-98	15 months	Mine expansion minor revision
Stillwater Expansion (Hertzler Impoundment)	Underground platinum & palladium	4-96	1-97	10-98	11-98	11-98	23 months	New tailing impoundment added to existing mine
<i>Golden Sunlight</i>	<i>Open pit gold &amp; silver</i>	<i>10-95</i>	<i>3-96</i>	<i>EIS / 4-98</i>	<i>6-98</i>	<i>7-98</i>	<i>27 months</i>	<i>Renewal and expansion of existing permit</i>
East Boulder	Underground platinum & palladium	2-90	8-90	EIS / 5-92	12-92	4-93	28 months	Draft EIS, Supplemental Draft EIS, and Final EIS prepared; Forest Service ROD 2-93; bond submitted 4-93
Stansbury	Vermiculite	6-87	6-90	EIS / 5-93	6-93		36 months	Permit issuance pending receipt of bond
Noranda Montanore	Underground copper and silver	3-89	11-89	EIS/ 10-92	11-92	5-93	36 months	Joint USFS decision - Forest Service ROD 5-93
<i>Zortman Expansion</i>	<i>Open pit gold &amp; silver</i>	<i>2-92</i>	<i>7-93</i>	<i>3-96</i>	<i>10-96</i>	<i>10-96</i>	<i>39 months</i>	<i>Expansion of existing mine</i>
Cominco	Garnet placer mine	2-92	5-92	EA / 6-92		4-95	-	
McDonald - Seven Up Pete	Open pit gold	11-94	3-96	EIS /			-	EIS work suspended 7-98 due to failure to pay MEPA fees; application dormant
New World	Open pit gold	11-90	4-93	EIS /			-	Application withdrawn
Rock Creek - ASARCO	Underground copper & silver	10-92	7-93	EIS /			-	Original permit application submitted 5-87, deemed complete 11-89, placed on hold by applicant 9-90, reactivated 10-92. Draft EIS, Supplemental Draft EIS on revised proposal prepared, Final EIS pending
General quarry	Programmatic review for small quarries		8-99	EA / 10-99			-	Responding to comments before finalizing

\* Time for MEPA review is defined as time between the dates for "application complete" and "record of decision".  
*Italics* -- means that federal permitting was also required. See page 138.

Following the receipt of a complete application for an operating permit, the agency has 30 days to review the adequacy of the proposed reclamation plan or 60 days from receipt of the initial operating permit application if the agency doesn't notify the applicant of any completeness deficiencies. Failure to notify the applicant of deficiencies or inadequacies in the operating permit application or the proposed reclamation plan within statutory time periods requires the state to issue the permit upon receipt of the bond.

These time limits may be extended through negotiation with the applicant for a period not to exceed 75 additional days in order to determine if an EIS is required, extended 365 days to conduct a reasonable review of a major operation, or extended by department declaration for up to 180 days for site inspections due to adverse weather. The applicant may waive the negotiated deadlines.

The information in **Table 8-4** and **Table 8-5** shows a wide range of time that it takes to process a metal mine operating permit. Some EIS projects are completed in 4 to 7 months (South Beal, Diamond Hill, and Stillwater under river crossing), and some EA projects take 8 to 11 months (Dillon Vermiculite and Barretts Regal Mine). **Table 8-5** indicates that although there may be a period of time that elapses from when the agency notifies the applicant that an application is not complete to when the applicant provides the requested information, once the agency has the information, the applicant is promptly notified.

The reasons for the variation in the timeframes due to MEPA compliance are likely related to factors like those listed in **Table 8-3**. The total elapsed time from the initial application to final permit issuance may include other factors not related to MEPA compliance.

**Table 8-5. Metal Mine Permitting - Application Completeness Review; Selected Permits**

Project	Description	Initial Application	DEQ's Deficiency Letter	Applicant's Response	Application Complete	Comments
Majesty	Open pit gold	2-28-97	4-10-97	8-31-98	9-18-98	Converted from small miner
Stillwater Expansion (SMC2000)	Underground platinum & palladium	12-7-90	1-25-91	3-27-91	10-9-91	Expansion of existing mine
			4-26-91	5-13-91		
			6-14-91	7-8-91		
			8-13-91	9-10-91		
Gem River	Placer sapphire & gold	4-29-96	6-5-96	5-30-97	4-16-98	Permit issuance pending receipt of bond
			6-30-97	12-23-97		
			1-23-98	3-17-98		
Golden Sunlight	Open pit gold & silver	10-25-95	10-26-95		3-22-96	Renewal & expansion of existing permit
			11-8-95			
			11-14-95	12-4-95		
			1-2-96	1-16-96		
			2-15-96	2-23-96		

Source: Department of Environmental Quality

## ***State Land Timber Sales***

The EQC reviewed information provided by the DNRC forest management program that listed the 26 timber sales that were made on state lands during fiscal year 1999 (**Table 8-6**). The information shows the name of the timber sale project, a description and location of the sale, a point in time when the agency determined that the project should go forward (project scoping), the type of MEPA document prepared and the date of its completion, the date of the record of decision, the date of the sale, the elapsed time for MEPA review, and any explanatory comments.

The information shows that EISs were produced for two timber sale projects that were sold in fiscal year 1999--the Mid-Fork Blacktail and the Cyclone/Coal I and II sales. These EISs took 20 and 22 months respectively from the initial scoping of the project to the record of decision date. The Mid-Fork Blacktail project review was completed in September 1997, it was sold 11 months later in August 1998, and it was the subject of a court challenge in February 1999 and a District Court ruling in September 1999. The Cyclone/Coal project review was completed in November 1998. It was sold 8 months later in July 1999. DNRC is required to have its timber sale projects approved by the State Land Board before they are sold. This can result in additional administrative delays as well as delays resulting from citizen concerns brought before the State Land Board.

The environmental review of the remaining 24 fiscal year 1999 timber sale projects included the preparation of an EA MEPA document. The elapsed time for these reviews range from 2 months to 2 years and 9 months. The elapsed time for the MEPA review is defined here as the time between the initial public advertising or notice of intent to propose a timber sale ("public scoping") and the record of decision/MEPA document completion date. The average time for review of the 23 EA timber sale projects (excluding the outlier Flat Pardee sale) is 13 months, and the mean is 12 months. It is not known how much of this time is actually dedicated to MEPA document preparation for the project and how much is devoted to other agency efforts and priorities. Since there is no permittee involved awaiting a state decision and no statutory deadlines within which the agency must perform its work, these timeframes may not accurately reflect MEPA-only review efforts.

**Table 8-6. DNRC Timber Sales for Fiscal Year 1999**

Project Name	Description	Project (Scoping) <sup>1</sup>	MEPA Document Type Date Completed	Record of Decision/ Finding Date	Date of Sale	Elapsed Time for MEPA Review <sup>2</sup>	Comments
<b>Spring Rock</b>	462 acre t.s. near Olney	11/96	EA - 12/97	12/97	7/1/98	13 mos	
<b>Avon South #2</b>	277 acre t.s. near Avon	3/94	EA - 2/96	12/96	7/14/98	2 yrs 9 months	Second of two sales covered by this EA.
<b>Beaver Ball</b>	282 acre t.s. near Grass Range	9/96	EA - 5/97	5/97	7/15/98	8 mos	No bids the first time. Sold at a later time.
<b>Potter Creek</b>	166 acre t.s. near Lewistown	1/95	EA - 3/96	3/96	7/15/98	14 mos	Purchaser forfeited. Resold.
<b>Mid-Fork Blacktail</b>	1,129 acre t.s. near Dillon	1/96	EIS - 9/97	9/97	8/13/98	1 yr 8 mos	Complaint filed 2/25/99. District Court decision 9/16/99. Logging approved on all but 33 acres.
<b>2% Cable</b>	237 acre t.s. near Sula	6/95	EA - 12/95	12/95	8/18/98	6 months	Third of three sales covered by this EA.
<b>Potomac</b>	1,208 acre t.s. near Bonner	3/94	EA - 6/95	6/95	8/20/98	1 yr 3 mos	Third of three sales covered by this EA.
<b>Stewart/Butcher</b>	173 acre t.s. near Trego	3/97	EA - 3/98	3/98	9/1/98	12 mos	
<b>Two Crow</b>	344 acre t.s. near Pablo	5/95	EA - 1/98	1/98	10/28/98	2 yrs 8 mos	Public controversy. Conservation license granted for portion of sale.
<b>Kirby</b>	96 acre t.s. near Busby	6/98	EA - 8/98	8/98	12/8/98	2 mos	
<b>Pine Ridge</b>	176 acre t.s. near Pompeys Pillar	8/98	EA - 11/98	11/98	1/7/99	3 mos	
<b>Middle Bench</b>	256 acre t.s. near Grassrange	7/97	EA - 4/98	4/98	12/21/98	9 mos	Litigation filed. Injunction not granted.

<sup>1</sup> First public advertisement or notice of intent to propose timber sale

<sup>2</sup> Column equals time from "project initiation/scoping" to "record of decision/finding date". It does not include litigation time or time to actual sale.

Project Name	Description	Project (Scoping) <sup>1</sup>	MEPA Document Type Date Completed	Record of Decision/ Finding Date	Date of Sale	Elapsed Time for MEPA Review <sup>2</sup>	Comments
Sheep Creek	90 acre t.s. near White Sulphur Spr.	6/98	EA - 12/98	12/98	1/20/99	6 mos	
Yank Creek	43 acre t.s. near Hardy	1/96	EA rev 12/97	11/97	1/25/99	1 yr 10 mos	
Cook Bear	909 acre t.s. near Plains	3/96	EA - 12/97	12/97	3/4/99	1 yr 9 mos	
Magpie	429 acre t.s. near Dixon	Early 1996	EA - 1/98	4/98	4/6/99	2 yrs 2 mos	
Aspen	366 acre t.s. near Ekalaka	4/95	EA - 6/95	4/96	4/6/99	12 mos	Purchaser forfeited sale. Resold.
Cadwell	465 acre t.s. near Broadus	4/97	EA - 12/97	12/97	4/28/99	8 mos	
Rhodes Draw	393 acre t.s. near Kalispell	11/97	EA - 2/99	2/99	4/28/99	1 yr 3 mos	
Tarkzeau	388 acre t.s. between Tarkio & Superior	11/97	EA - 5/98	6/98	6/1/99	7 mos	
East Parrot	199 acre t.s. near Roundup	8/98	EA - 3/99	3/99	6/1/99	7 mos	
<i>Painted Rocks</i>	<i>207 acre t.s. near Darby</i>	<i>7/96</i>	<i>EA - 2/98</i>	<i>3/98</i>	<i>6/15/99</i>	<i>1 yr 7 mos</i>	
<i>Cyclone/Coal I &amp; II</i>	<i>495 acre t.s. near Columbia Falls</i>	<i>1/97</i>	<i>EIS - 11/98</i>	<i>11/98</i>	<i>6/17/99 6/00</i>	<i>1 yr 10 mos</i>	<i>First of two sales covered by this EIS.</i>
Tarkzeau Stewardship	315 acre t.s. between Tarkio & Superior	11/97	EA - 5/98	6/98	6/30/99	7 mos	Stewardship contract.
Boyer Fire Salvage	278 acre t.s. near Plains	11/98	EA - 4/99	4/99	6/24/99	5 mos	Salvage sale.
Flat Pardee	829 acre t.s. near Superior	6/94	EA - 3/98	5/98	6/29/99	4 yrs	Delay due to agency priorities.

*Italics -- federal permitting was also required. See page 138.*

It is difficult to make conclusions about the reasons for the differences in the project timeframes based only on the information in **Table 8-6**. There appears to be no obvious relationship between the time it takes to process a project and its size or the type of MEPA review document prepared. For example, the 43-acre Yank Creek timber sale near Hardy, south of Great Falls, took 22 months to review and prepare an EA, and the 495-acre Cyclone/Coal timber sale near Columbia Falls took 22 months to review and prepare an EIS according to the information provided. However, there does seem to be one identifiable trend shown in the table. Timber sales on state lands east of the continental divide average 9 months with a mean of 8 months for the environmental review/sale preparation process. This is less than the overall average and may reflect the impact of those criteria listed by the program in **Table 8-3**. There the agency cited project size, presence of an organized project opposition, federal permitting requirements (wetlands, endangered species), geographic considerations, potential for litigation, and political considerations as the primary causes of MEPA review delays. For sales from state lands around Grass Range, Lewistown, Busby, Pompeys Pillar, White Sulphur Springs, Hardy, Ekalaka, Broadus, and Roundup, these elements may not be present in comparison to timber sales in other parts of the state. Other factors may also be involved if this trend is, in fact, a reliable conclusion, such as differences in environmental impacts and economics between the regions.

### ***Game Farm (Alternative Livestock Ranch) Permits***

The EQC heard concerns from FWP and others regarding the processing and permitting of alternative livestock ranch (ALR or game farm) permits. In response to an EQC request, the FWP provided the information shown in **Table 8-7**, which lists the permit applications processed by the agency in the 30 months between June 1997 and December 1999. The agency shows that it prepared 28 EA MEPA documents on 28 applications. As noted previously, the agency is required to act on a completed application within 120 days unless an EIS is required, in which case another 180 days may be allowed to conduct the review. There is no penalty provided or automatic permit issuance required for failure to meet these timeframes. The 120-day limit was increased in 1993 from a previous 60-day time limit. **Table 8-7** indicates that in most every case, the FWP is able to complete its MEPA and permit review within the 120-day timeframe.

### ***MEPA Delays Due to Federal Agency Involvement***

Delays due to "federal agency workloads, actions, decisions, and permits" and whether or not the project was also "subject to a (federal) permitting action" were noted by both DEQ and DNRC as significant reasons for delay in the implementation of MEPA (**Table 8-3**). As noted earlier in this chapter, **Table 8-4** lists metal mine operating permit applications reviewed by DEQ between January 1990 and December 1999 and **Table 8-6** lists timber sale projects on state lands for fiscal year 1999.

**Table 8-7. Alternative Livestock Ranch Applications and MEPA Dates - FWP - June 1997 Through December 1999**

Project name	Description	Date of application	Date application complete - (MEPA start date)	MEPA document - type/date prepared	Record of decision - date	Elapsed time for MEPA review (column 6 minus column 4)	Comments
Mesaros Elk Ranch	500 acre ALR Cascade County	7/25/99	8/4/99	EA	12/2/99	120 days	Appeal of final decision by Montana Wildlife Federation.
Samuelson Elk Ranch	50 acre ALR Powder River County	5/19/99	7/14/99	EA	11/5/99	114 days	
Gregory Elk Ranch	320 acres ALR Rosebud County	4/9/99	4/26/99	EA	8/18/99	114 days	
Kafka Big Sandy	65 acre ALR Hill County	12/11/98	1/4/99	EA	5/10/99	126 days	
Kafka Diamond K #2	869 acre ALR Hill County	12/11/98	1/4/99	EA	5/10/99	126 days	
Ludwig Elk Ranch	350 acre ALR Carter County	12/28/98	1/6/99	EA	4/29/99	113 days	
Nadon Elk Ranch	19 acre ALR Lincoln County	11/20/98	11/27/98	EA	3/24/99	97 days	
Janicki	35 acre ALR Flathead County	9/25/98	10/24/98	EA	2/19/99	118 days	
Spoklie (Tobie Creek)	81 acre ALR Flathead County	9/18/98	10/16/98	EA	2/10/99	117 days	Original application 2/9/98 with acceptance 3/9/98 – change in boundaries resulted in new application 9/18/98.
Kvapil/Wertz	34 acre ALR Flathead County	7/22/98	8/19/98	EA	12/16/98	119 days	Applicant appealed stipulations placed on license – currently the case is still pending.
Kafka/Schubarth	1,100 acre ALR Hill County	7/9/98	7/9/98	EA	10/16/98	99 days	Original application 3/5/98 accepted 3/16/98 – after discussion with applicant, new application 7/9/98.
Dinsdale	25 acre ALR Carbon County	6/23/98	7/22/98	EA	11/23/98	124 days	
Levengood	10 acre ALR Flathead County	4/15/98	5/9/98	EA	9/11/98	125 days	
Hager	37 acre ALR Teton County	3/6/98	3/16/98	EA	7/13/98	119 days	

Project name	Description	Date of application	Date application complete - (MEPA start date)	MEPA document - type/date prepared	Record of decision - date	Elapsed time for MEPA review (column 6 minus column 4)	Comments
Beebe	5 acre ALR Lincoln County	9/19/97	10/21/97	EA	2/13/98	115 days	
Raaum	75 acre ALR Roosevelt County	10/1/97	10/10/97	EA	2/4/98	117 days	
Ayers #2	22 acre ALR	8/12/97	8/25/97	EA	12/29/97	126 days	
Reeves	58 acre ALR Broadwater County	7/21/97	7/30/97	EA	11/24/97	117 days	
Buhmann	29 acre ALR Blaine County	7/8/97	7/8/97	EA	10/24/97	108 days	
McCart	228 acre ALR	5/30/97	6/12/97	EA	11/3/97	144 days	
Tutvedt	38 acre ALR Flathead county	5/23/97	6/23/97	EA	10/14/97	113 days	
Zelenka	96 acre ALR Pondera County	5/5/97	6/5/97	EA	9/24/97	80 days	
Shelton	13 acre ALR Cascade County	4/15/97	5/2/97	EA	9/8/97	129 days	
Neuman	35 acre ALR Teton County	4/10/97	5/2/97	EA	9/10/97	131 days	
Perry	25 acre ALR Silver Bow County	3/25/97	4/23/97	EA	8/14/97	105 days	
Ridgley	80 lacre ALR Sanders County	4/4/97	5/6/97	EA	9/30/97	107 days	
Backes	28 acre ALR Flathead County	3/13/97	4/13/97	EA	8/7/97	116 days	
Stetson	14 acre ALR Flathead County	1/27/97	2/26/97	EA	6/16/97	141 days	

Source: FWP



DEQ was asked to identify which of the mining projects listed in **Table 8-4** also involved a federal agency in the decisionmaking process and which permit applications were delayed as a result of this federal involvement. **Table 8-8** shows (X) that 17 of the 22 applications involved a federal agency in the decisionmaking but in only two cases did that involvement result in a delay in the MEPA process (Golden Sunlight and Zortman-Landusky). Both cases involved Corps of Engineers decisions regarding federal Clean Water Act 404 permits (dredge and fill). The two cases in which MEPA delays resulted in part from delays due to federal participation in the decision are shown as italicized in **Table 8-4**.

Similarly, DNRC was requested to identify fiscal year 1999 timber sales in which federal involvement or permitting was involved and to identify when that involvement added to the length of time it took to implement the MEPA process. Unlike the DEQ mine permits for projects that are often located on federal lands and necessarily involve federal agencies, at least in the role of landlord, DNRC state land timber sales do not require significant federal involvement. DNRC staff advised that, typically, federal involvement in state timber sale decisions is limited to obtaining federal permits to access state timber lands. Use of existing roads is less problematic than a situation in which a new road must be constructed. DNRC identified 2 fiscal year 1999 timber sales out of the 26 listed in **Table 8-6** that had a federal agency involvement--the Painted Rocks and the Cyclone/Coal sales. They are shown in italics in **Table 8-6**. Neither environmental review process was reportedly delayed as a result of federal agency requirements.

Staff from both DEQ and DNRC stated that, currently, some environmental reviews are slowed due to the need for biological opinions from the U.S. Fish and Wildlife Service regarding threatened and endangered species. DNRC has experienced delays on some fiscal year 2000 timber sales due to the need for this review, and DEQ noted that the Rock Creek-ASARCO-Sterling MEPA process is currently awaiting, in part, a biological opinion by the federal agency.

**Table 8-8. Federal Permitting Involvement in Montana Metal Mine Permitting**

Project	BLM	Forest Service	Corps of Engineers	National Park Service
Majesty				
Sweetwater Garnet				
South Beal		X		
Diamond Hill	X			
Conda	X			
East Boulder		X		
Stillwater Under the River Crossing				

Project	BLM	Forest Service	Corps of Engineers	National Park Service
Dillon Vermiculite	X			
Stillwater Expansion (SMC2000)		X		
Gem River		X	X	
Barretts Regal Mine				
Stillwater Expansion (Hertzler Impoundment)		X	X	
Golden Sunlight	X		X (delay)	
East Boulder		X		
Stansbury	X		X	
Noranda Montanore		X	X	
Zortman Expansion	X		X (delay)	
Cominco			X	
McDonald – Seven Up Pete			X	
New World		X	X	X
Rock Creek – ASARCO-Sterling		X	X	
General Quarry				

Source DEQ April, 2000

Finally, DEQ staff advised that MEPA analysis delays are not typically the result of any cooperative-lead agency involvement, such as a process involving a joint state-federal EIS. Delays are more often the result of the need to address comments and issues raised by secondary agencies, such as the EPA, the U.S. Fish and Wildlife Service, and, in the case of the Rock Creek-ASARCO-Sterling mine, the state of Idaho DEQ.